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and prolonging human life. Purely humanitarian notions would be a sufficient basis for the action even if the economic results were doubtful.

RICHMOND MAYO SMITH.

*Preussisches Staatsrecht.* Von CONRAD BORNHAK. Freiburg i. B., Akademische Verlagsbuchhandlung von J. C. B. Mohr (Paul Siebeck), 1889.—2 vols., xii, 551, vii, 504 pp.

Mr. Bornhak is already known to the political student as the writer of several articles in the various German political reviews and as the author of several works on Prussian administration, the most important of which is the *Geschichte des preussischen Verwaltungsrechts*, published in 1884–1886 and reviewed in the *POLITICAL SCIENCE QUARTERLY* (volume ii, page 172). His previous studies therefore have specially qualified him for the more ambitious work he has just undertaken, *viz.* the presentation of the internal public law of Prussia.

According to the original plan, the *Preussisches Staatsrecht* was to be confined to two volumes; the first of which was to treat of the constitutional law, while the second was to be devoted to the administrative law. The author, however, has found that one volume offered insufficient space for the treatment of such an immense subject as administrative law, and in his second volume he sets forth only the general principles of Prussian administrative law, reserving for a third volume which is yet to appear the more detailed description of the various branches of administration.

As a whole the work is well done. While the book does not go into sufficient detail to replace the great works of von Rönne, it has the merit of presenting the material in a more philosophic spirit and in an infinitely more readable form. While von Rönne's book must be used almost exclusively as a book of reference, Mr. Bornhak's is so composed as to be interesting if not really easy reading. Naturally the volume devoted to administrative law is more deserving of praise than the volume treating of constitutional law. Mr. Bornhak's studies have been almost exclusively devoted to administration. He possesses in a higher degree the power of clear description than the powers of acute analysis and of delicate distinction which are so necessary for the constitutional writer. His deficiencies become rather painfully evident in his discussion of the question of sovereignty. The old problem of the whereabouts of sovereignty, which has given American publicists such trouble, cannot be said to have been satisfactorily solved by Mr. Bornhak for the German empire and the Prussian monarchy. The dual form of government which exists in Germany has led him—just as the dual form of government in the United States has led so many American

writers and statesmen — to conclude that there is a composite state, each portion of which has its sphere of sovereignty. There is, however, this excuse for Mr. Bornhak's assumption : that while Prussia cannot of its own will amend the constitution, it can prevent amendments. He argues from this that Prussia is still sovereign, but that its sovereignty is legally limited. These two propositions of course are contradictory. No state is legally sovereign if its action can legally be limited. Governments, not states, are limited in their action.

The same confusion is evident when he comes to treat of the position of the Prussian crown. All of this portion of the book seems to be written to prove the correctness in law of King William's celebrated utterance which is put at the head of the work : "Die Herrscher Preussens empfangen ihre Krone von Gott." The expedients to which Mr. Bornhak is driven in order to prove that the crown is the Prussian state (so far as there is one) are oftentimes very remarkable. At one time he says absolutely that the king is the state. At another, that he may in the exercise of his sovereign rights be limited by other organs. That the king was the state was undoubtedly true before 1848 ; but since the establishment of the constitution the state is to be found in the union of king and legislature, since it requires the concurrent action of both to amend the constitution. The king as king has been reduced to the position of part of the government. As government, the king of course can be limited. If he were state he could not be limited, for sovereignty is not susceptible of legal limitation. If Mr. Bornhak could but seize this distinction between state and government, his whole book would be much clearer and his treatment of these mixed questions would be more valuable. This failure to distinguish between state and government — which is characteristic of almost all German publicists and is due no doubt to the fact that the German state is usually a peculiar organization of the government — detracts from the value of other portions of Mr. Bornhak's work. Starting out with the indisputable proposition that no one can legally possess rights against the state, Mr. Bornhak ends with the conclusion that no one can really have rights against the government, though he at the same time admits that the law often recognizes claims against the government which individuals may enforce by suit. If such claims are not rights, what are rights? Of course the state (*i.e.* the constitution-making and amending power) may refuse to recognize claims of individuals ; but if it does recognize them, or if its constitutional representatives recognize them, then the individual has as complete a right over against the government as he has against any other individual.

Aside from this fundamental fault, Mr. Bornhak's book is excellent ; and in this respect even it is little worse than other German books on

public law. The administrative questions are especially well treated. The influence of Dr. Gneist, to whom the book is dedicated, is quite evident; and the work bears to Prussia somewhat the same relation which Dr. Gneist's works bear to England. It is, all in all, one of the best works we have on Prussian public law, especially on Prussian administrative law. The historical part of it is just full enough to give the reader a comprehension of Prussian development: and many questions hitherto very unsatisfactorily treated are discussed with precision and thoroughness. Especially to be mentioned are the discussion of the responsibility of Prussian ministers and the description of the reform of local government since 1808, which is the most important of the internal movements in Prussia in this century. It should be added that throughout the entire work Mr. Bornhak displays a strong conservative bias.

F. J. G.

*Traité de la juridiction administrative et des recours contentieux.*

Tome second. Par E. LAFERRIÈRE, vice-président du Conseil d'État. Paris, Berger-Levrault et C<sup>ie</sup>. — 675 pp.

The first volume of this great work was noticed in the *POLITICAL SCIENCE QUARTERLY*, volume ii, page 709; the volume under consideration is the second and last. The first volume had greater interest to the foreign reader, on account of the fact that it was devoted to the general exposition of the judicial control over the administration and to a comparison of the different methods of forming this control in different countries. The second is of especial value to the French lawyer and political student, because it is devoted to a detailed description of the powers of control possessed by the various French administrative courts over the acts of French administrative officers. But it must not be supposed that this work, because it treats of essentially French law, is not of value or interest to the general student of administration. It is unquestionably the best work in existence on the subject of which it treats, and no one who is interested in administrative studies can afford to be without it. Probably the most interesting questions discussed are the judicial control over the acts of the administration relative to direct taxes and elections, and that power possessed by the Council of State (which is altogether peculiar to French law) to quash any act of any administrative authority on the ground that such authority has violated the law or exceeded its powers. The simple matter of the direct taxes gives rise every year to more than 300,000 appeals to the administrative courts — appeals not only against the illegality of the tax or the non-observance of the necessary legal forms, but also against the decision by the administration as to the value of property for the pur-